

REMARKS

Applicants appreciate the courtesies extended by the Examiner Randall Winston to the undersigned as well as the Applicant, Karen Slimak, for our personal interview conducted on July 11, 2007.

During the aforementioned Interview Applicants' representative discussed with Examiner Winston the examiner's rejections under 35 U.S.C. 112, first and second paragraphs.

During the aforementioned Interview, Applicants respectfully pointed out that the claims are not vague and indefinite because they clearly described the steps of a method even though Applicant has deleted the phrase "for treating chronic disease, conditions and symptoms in animals". However, it is the manipulative steps of the claims that define the method and not the preamble of the claim. However, an agreement was reached that the independent claims would be amended to recite a method for dietary intervention, with support being found in the original filed Specification, for example at Page 1 under the heading "Field of Invention". Additionally, Applicants discussed the rejections of the claims under 35 U.S.C. 112, first paragraph, noting support clearly being found in the original disclosure. For example, on Page 1 of the Application under the heading "Field of Invention" as well as in the various types of concentrated tropical crops, and as described for example throughout the specification beginning on Page 1 as well as detailed in the examples of the specification. For example, See the Table on Page 51 under the heading Example III, on Page 52 under the heading Example IV and on Page 53 under the heading Example VI. This dietary intervention method of the claimed invention is fully supported not only by the taxonomic group of

tropical root crops, but also by specific examples of species from within said tropical root crops which are suitable for practice of the invention. Accordingly, Applicants submitted during the interview that there was no basis for the 35 U.S.C. 112 first and second paragraphs rejections.

By the foregoing Amendment, Claims 1, 2, 4-7 and 9-20 remain pending in the application.

Although the Examiner has indicated that Claims 15 and 16 are withdrawn from consideration, they are not directed to a non-elected inventions, but rather to non-elected species. Applicants remind the Examiner that upon allowance of a generic claim a reasonable number of species will be examined in the same application. Since most of the claims are generic upon allowance of generic claims, the non-elected Claims 15 and 16 should also be considered within this Application. Thus, they remain pending at the present time.

Reconsideration of the previous rejections of Claims 1-2, 4-7, 9-14 and 17-20 under 35 U.S.C. 112 second paragraph allegedly as being indefinite is respectfully requested.

As noted above, Applicants are no longer claiming a method “for treating chronic disease, conditions and symptoms in animals” but rather to a method for dietary intervention which Applicant regards as the invention.

Accordingly, Applicants remind the Examiner that statutorily the decision as to what she could claim is clearly left to the Applicant and not to the Examiner, 35 U.S.C. 112, second paragraph, as the Courts long ago have decided, *See for example, In re Borkowski*, 164 USPQ 642, 645 (CCPA 1970)

“The examiner’s approach in determining whether appellants’ claims satisfy the requirements of §112 appears to have been to study Appellants’ disclosure, to formulate a conclusion as to what he (the examiner) regards as the broadest invention

supported by the disclosure, and then to determine whether appellants' claims are broader than the Examiner's conception of what "the invention" is. We cannot agree § 112 permits of such approach to claims. The first sentence of the second paragraph § 112 is essentially a requirement for *precision and definiteness* of claim language. If the scope of subject matter embraced by a claim is clear, and if the applicant has not otherwise indicated that he intends the claim to be of a different scope, then the claim does particularly point out and distinctly claim the subject matter which the applicant regards as his invention."

Accordingly, since Applicant has *affirmed* that the claimed manipulative steps are what she regards as the invention, the Examiner cannot substitute his own determination.

Applicant respectfully submits that the Examiner's questioning of what treated diseases, symptoms or conditions exists is completely inapposite the claimed invention. Accordingly, the claims do comply with 35 U.S.C. 112, second paragraph and withdrawal of the rejection is respectfully requested. As to Claim 2 Applicant has corrected the typographical errors appearing therein.

Reconsideration of the rejections of Claim 1-2, 4-7, 9-14 and 17-20 under 35 U.S.C. 112, first paragraph is also respectfully requested.

The previous Declaration of Karen M. Slimak is no longer under consideration insofar as Claims 1-2, 4-7, 9-14, and 17-20 are supported verbatim in the original disclosure, for example, at Page 1 under the heading "Field of the Invention" first two sentences as well as the examples beginning on Page 51 under Example III, Example IV on Page 52 and Example V on Page 53. Each tropical root crop (as well as the enumerated crops of independent Claim 20) are clearly supported by the taxonomic families, as well as specific species within the taxonomic families, thus is the

question of enablement of the method of dietary intervention as in the claims is clearly supported by the original disclosure.

To the extent that the Examiner is still arguing that the application is enabled only for treating particular disease, conditions and symptoms recited in parent application 09/889,133 and issued as U.S. Patent 6,632,461, Applicant again points out her remarks noted above with regards to the request for reconsideration of the rejection of the claims under 35 U.S.C. 112 second paragraph. It is the Applicant, not the Examiner, who determines what the Applicant regards as the invention and having regard for the invention as a method for dietary intervention, the Examiner is powerless to make an argument redefining the invention as treating certain diseases, conditions and symptoms.

For all of the foregoing reasons, Applicant respectfully requests withdrawal of all rejections and passage of the application to issue.

Respectfully submitted,



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